

NightOwl - Terms of use

v1.1

Terms of use are supplied electronically. A paper format is available on request at info@ectosense.com.

DISCLAIMER: PLEASE READ THESE TERMS OF USE CAREFULLY BEFORE USING THE APPLICATION (AS DEFINED BELOW). BY USING THE APPLICATION, YOU AGREE TO OUR TERMS OF USE.

These Terms of Use (the "**Agreement**") describe the terms and conditions under which users ("**Users**" or "**you**") can use the Application (as defined hereafter). The Application is operated and managed by Ectosense NV, registered with the Crossroads Bank of Enterprises under number 0636.908.136 and having its registered office at Bosbessenlaan 19A, B-3110 Rotselaar or by any of its affiliates (jointly "**Ectosense**" or "**we**"). If you have any questions about the Products (as defined hereinafter) or this Agreement, please contact us via info@ectosense.com.

1. Description of the Application

Ectosense provides the NightOwl home sleep apnea test (HSAT), a system that detects sleep apnea. NightOwl HSAT is mainly available on prescription or recommendation from a doctor. NightOwl HSAT consists of the NightOwl Sensor, the NightOwl Mobile Application, the NightOwl Dashboard, and the NightOwl Platform (each as defined hereinafter and collectively the "**Application**"). The NightOwl Sensor streams the data from the NightOwl Sensor to the NightOwl Mobile Application, which subsequently uploads the data to the NightOwl Platform where the data will be analyzed automatically, and a comprehensive diagnostic report will be produced. As a consequence thereof, the Application also analyses and stores data. The recordings via the NightOwl Mobile Application are performed by placing the NightOwl Sensor on the forehead or finger of the User thereby detecting the photoplethysmography (PPG) and motion through accelerometer measurements. The NightOwl Dashboard is an online tool with the sole intention to display and store your data by way of diagnostic reports.

The Results (as defined hereinafter) are automatically transferred to the NightOwl Dashboard. Please note that this automatic transfer is only possible after you have made the link between the Ectosense Sensor and the Ectosense Mobile Application. Please note that the automatic forwarding of the results does not imply that you are continuously monitored by your doctor or Ectosense.

The Application is available to users in European countries covered by the CE regulations.

PLEASE NOTE THAT YOU ARE NOT OBLIGED TO INSTALL THE APPLICATION AND YOUR REFUSAL TO INSTALL THE APPLICATION DOES NOT HAVE ANY IMPACT ON THE TREATMENT BY YOUR PHYSICIAN OR THE QUALITY OF SUCH TREATMENT. FURTHERMORE, ECTOSENSE WOULD LIKE TO DRAW YOUR ATTENTION TO THE FACT THAT YOUR PHYSICIAN DOES NOT ANALYZE OR PERFORM ANY CHECK-UP OF THE RESULTS IN REAL-TIME.

2. Definitions

"Activation Code" means the code you are asked to scan or type in before making use of the Application, as such linking your data with the right NightOwl Dashboard account;

["Physician" means the doctor (or other medical expert) from which you obtained your Activation Code to make the automatic link with your Physician via the NightOwl Mobile Application.

"Delivery Date" means the date on which you obtained the Activation Code;

"Documentation" means the documents made available to the User by Ectosense with regard to the use of the Application;

"Fees" means the amount to be paid by the User (if required) to either Ectosense or the Physician for the use of the Application;

"NightOwl Sensor" means the sensor device placed on the User's finger or forehead that acquires PPG and accelerometer measurements and communicates with the NightOwl Mobile Application;

"NightOwl Mobile Application" means the mobile application (i) which the User has to download on its mobile device and (ii) is intended receive, display, store and transmit certain personally identifiable information, including but not limited to first name, last name, date of birth, email, phone number, photoplethysmography and accelerometer measurements;

"NightOwl Dashboard" means the dashboard made available to the Physician that recommended the NightOwl HSAT, located at sleep.ectosense.com;

"NightOwl Platform" means the platform on which the NightOwl Mobile Application and the NightOwl Dashboard are connected and collectively function. Depending on the user profile (User, Physician, Clinic administrator) different application functions can be made available;

"Intellectual Property Rights" means any and all now known or hereafter existing (a) rights associated with works of authorship, including copyrights, mask work rights, and moral rights; (b) trademark or service mark rights; (c) trade secret rights, know-how; (d) patents, patent rights, and industrial property rights; (e) layout design rights, design rights, (f) trade and business names, domain names, database rights, rental rights and any other industrial or intellectual proprietary rights or similar right (whether registered or unregistered); (g) all registrations, applications for registration, renewals, extensions, divisions, improvements or reissues relating to any of these rights and the right to apply for, maintain and enforce any of the preceding items, in each case in any jurisdiction throughout the world;

"Products" means the Application, Website and Documentation;

"Results" means the results of the analysis by the NightOwl Platform of the photoplethysmography (PPG) and motion through accelerometer measurements recorded by the User through the NightOwl Mobile Application;

"Term" means the period for which your Physician has advised/recommended you to use the Application;

"Website" means the website available at www.ectosense.com.

3. Applicability

By accepting the Terms of Use, you acknowledge and agree that your use of the Products is governed by this Agreement and our Privacy Policy. If you, at any time, do not agree to any provision of this Agreement you may not use or continue to use in any manner the Products.

This Agreement and our Privacy Policy can also be viewed, downloaded and printed via www.ectosense.com.

In the event the Application or Website uses services of third parties, the terms of service and/or privacy policies of those third parties may apply. By accessing such third-party service, you agree to comply with the applicable terms and you acknowledge that you are the sole party to such terms. Ectosense cannot be held liable in any way with regard to the content of such third parties, terms or privacy policy.

We reserve the right at any time, and from time to time, with or without cause to:

- amend this Agreement;
- change the Products (including but not limited to the Application), including eliminating or discontinuing, temporarily or permanently any service or other feature of the Products (including but not limited to the Application) without any liability against the User or any third parties;
- deny or terminate, in part, temporarily or permanently, your use of and/or access to the Products (including but not limited to the Application).

Any such amendments or changes made will be effective immediately upon us making such changes available in the Application or otherwise providing notice thereof. You agree that your continued use of the Products after such changes constitutes your acceptance of such changes.

You hereby acknowledge that you have carefully read all of the terms and conditions of our Privacy Policy (which can be accessed at www.ectosense.com and agree to all such terms and conditions.

We advise you to return to this page periodically to ensure familiarity with the most current version of this Agreement.

4. No right of withdrawal

By accepting the Terms of Use and after you have completed the registration process (including establishing the link with your Physician), you acknowledge that you have access to the intended use of the Application as set forth in this Agreement. As a consequence thereof, you acknowledge and agree that you lose your right to withdraw once the performance of the delivery of the Application by Ectosense has started.

5. Use of the Products

Please note that our Products are not directed towards and may not be used by minors. You are only allowed to use our Application under the supervision of your Physician.

To use all features of our Application, your mobile device requires a WiFi or mobile internet connection. The access to such WiFi or mobile internet connection is your sole responsibility. Please make sure that your mobile device meets the minimum system requirements as set out on the download page. If your mobile device does

not meet these minimum system requirements, we cannot ensure that the Application will function properly. Ectosense will not be liable for any loss or damage arising from your failure to comply with the above requirements.

You agree to immediately notify Ectosense of any breach of security. Ectosense will not be liable for any loss or damage arising from your failure to comply with the above requirements.

During the Term, Ectosense may, in its sole discretion, provide you with updates. For the avoidance of doubt, Ectosense is not obligated to provide any updates to the Application, Documentation or Website.

6. License - restrictions

6.1 License by Ectosense. During the Term and subject to the timely payment of the Fees (if applicable), Ectosense grants you a non-exclusive, personal, restricted, non-sublicensable and non-transferable license to use the Application and/or the Documentation in accordance with this Agreement and the Documentation ("**License**"). You are not allowed to use the Application and/or the Documentation for any commercial purposes or to use the Application and/or Documentation, or a component of the foregoing in a manner not authorized by Ectosense. You shall use the Application and/or the Documentation solely in full compliance with (i) this Agreement; (ii) any additional instructions or policies issued by Ectosense, including, but not limited to, those posted within the NightOwl Mobile Application or on the Website; (iii) any applicable legislation, rules or regulations and (iv) the Documentation.

6.2 Restrictions. You agree to use the Products only for their intended use as set forth in this Agreement. Within the limits of the applicable law, you are not permitted to (i) make the Application and/or Documentation available or to sell or rent the Application and/or Documentation to any third parties; (ii) adapt, alter, translate or modify in any manner the Application and/or Documentation; (iii) sublicense, lease, rent, loan, distribute, or otherwise transfer the Application and/or Documentation to any third party; (iv) decompile, reverse engineer, disassemble, or otherwise derive or determine or attempt to derive or determine the source code (or the underlying ideas, algorithms, structure or organization) of the Application and/or Documentation, except and only to the extent that such activity is expressly permitted by applicable law notwithstanding this limitation; (v) use or copy the Application and/or Documentation except as expressly allowed under this article 6; (vi) gain unauthorized access to accounts of other users or the IT equipment or structure of Ectosense to provide the Products or use the Products to conduct or promote any illegal activities; (vi) use the Products to generate unsolicited email advertisements or spam; (vii) impersonate any person or entity, or otherwise misrepresent your affiliation with a person or entity; (viii) use any high volume automatic, electronic or manual process to access, search or harvest information from the Products (including without limitation robots, spiders or scripts); (ix) alter, remove, or obscure any copyright notice, digital watermarks, proprietary legends or other notice included in the Products; (x) intentionally distribute any worms, Trojan horses, corrupted files, or other items of a destructive or deceptive nature or use the Products for any unlawful, invasive, infringing, defamatory or fraudulent purpose; or (x) remove or in any manner circumvent any technical or other protective measures in the Products.

Except as expressly set forth herein, no express or implied license or right of any kind is granted to you regarding the Products or any part thereof, including but not limited to any right to obtain possession of any source code, data or other technical material relating to the Application.

6.3 License by user. By uploading, creating or otherwise providing information, data or images on or through the Application ("User Content"), and without prejudice to the provisions of our Privacy Policy, you grant Ectosense a non-exclusive, royalty-free, worldwide, sublicensable, transferable, license to use, copy, store, modify, transmit and display User Content to the extent necessary to provide and maintain the Application. Ectosense reserves the right, but is not obliged, to review and remove any User Content which is deemed to be in violation with the provisions of the Agreement or otherwise inappropriate, any rights of third parties or any applicable legislation or regulation.

7. Ownership

As between the User and Ectosense, the Products and all worldwide Intellectual Property Rights pertaining thereto, are the exclusive property of Ectosense and/or its licensors.

All rights in and to the Application and/or Documentation not expressly granted to the User in this Agreement are reserved by Ectosense and its licensors. Except as expressly set forth herein, no express or implied license or right of any kind is granted to the User regarding the Application and/or Documentation or any part thereof, including any right to obtain possession of any source code, data or other technical material related to the Application.

8. Suspension

8.1 Suspension for breach. If Ectosense becomes aware or suspects, in its sole discretion, any violation by you of this Agreement or any other instructions, guidelines or policies (including but not limited to the Privacy Policy) issued by Ectosense, then Ectosense may suspend or limit your access to the Application and/or the Website. The duration of any suspension by Ectosense will be until you have cured the breach which caused such suspension or limitation.

8.2 Suspension for non-payment. If you do not timely pay the Fees (if applicable), Ectosense might automatically suspend your use of the Application. The duration of such suspension will continue until all breaches have been cured.

9. Support

In case you need technical support, you can contact Ectosense at support@ectosense.com. Ectosense makes all reasonable efforts to respond as quickly as possible to any inquiries of Users.

10. Privacy

Ectosense is concerned with the protection of your privacy and engages itself to comply with the applicable laws on privacy protection in relation to the processing and its Privacy Policy. Our Privacy Policy (www.ectosense.com) is incorporated by reference in this Agreement. You consent to personal data being collected, used and processed in accordance with our Privacy Policy.

11. Payment

In consideration for the License (if applicable), the User agrees to pay to Ectosense or its Physician the Fees in a timely manner, as instructed by Ectosense. Before you pay any Fees, you will have the opportunity to review and accept the Fees that will be charged. All Fees are non-refundable, to the fullest extent permitted under applicable law.

If the User is instructed to pay the Fees directly to Ectosense, the User shall be able to choose between the following payment options by Visa card and MasterCard:

- A one-off payment of the Fees for the entire duration of the Term;
- Recurring payments of the Fees during the Term via an automatic monthly payment;

If you pay any Fees with a credit card, Ectosense may seek pre-authorization of your credit card account prior to your purchase to verify that the credit card is valid and has the necessary funds or credit available to cover your purchase.

If Ectosense would modify the applicable Fees, including by adding additional fees or charges, Ectosense will notify you thereof prior to the entry into force of such modified Fees. If you do not accept the modified Fees, Ectosense may discontinue your access to the Application. Ectosense shall not modify the applicable Fees during the Term.

12. Liability

12.1 To the maximum extent permitted under applicable law, Ectosense's liability arising out of or in connection with the Products under this Agreement whether in contract, warranty, tort or otherwise, shall not exceed the amount paid out under Ectosense's compulsory insurance policy at the date on which the applicable liability claim arises. Nothing in this Agreement shall limit or exclude Ectosense's liability for (i) gross negligence; (ii) willful misconduct, (iii) fraud or personal injury.

12.2 To the extent legally permitted under applicable law, Ectosense shall not be liable to the User or any third party, for any special, indirect, exemplary, punitive, incidental or consequential damages of any nature including, but not limited to damages or costs due to loss of profits, data, revenue, goodwill, production of use, procurement of substitute services, or property damage arising out of or in connection with the Products under this Agreement, including but not limited to any miscalculations, or the use, misuse, or inability to use the Products, regardless of the cause of action or the theory of liability, whether in tort, contract, or otherwise, even if Ectosense have been notified of the likelihood of such damages. The limitation in this article 12.2 shall not apply to the obligations of Ectosense under article 14 ("**Indemnification**").

12.3 You agree that Ectosense can only be held liable as per the terms of this article 12 to the extent damages suffered by you are directly attributable to Ectosense. For the avoidance of doubt, Ectosense shall not be liable for any claims resulting from (i) your unauthorized use of the Application, (ii) your or any third party's modification of (any parts) of the Application, (iii) your failure to use the most recent version of the Application made available to you or your failure to integrate or install any corrections to the Application issued by Ectosense, or (iv) your use of the Application in combination with any non-Ectosense products or

services. The exclusions and limitations of liability under this article shall operate to the benefit of Ectosense affiliates and subcontractors under this Agreement to the same extent such provisions operate to the benefit of Ectosense.

13. Warranties and disclaimers

13.1 By Ectosense. EXCEPT AS EXPRESSLY PROVIDED IN THIS ARTICLE 13 AND TO THE MAXIMUM EXTENT PERMITTED BY APPLICABLE LAW, THE PRODUCTS AND THE RESULTS ARE PROVIDED "AS IS," AND ECTOSENSE MAKES NO (AND HEREBY DISCLAIMS ALL) OTHER WARRANTIES, COVENANTS OR REPRESENTATIONS, OR CONDITIONS, WHETHER WRITTEN, ORAL, EXPRESS OR IMPLIED INCLUDING, WITHOUT LIMITATION, ANY IMPLIED WARRANTIES OF SATISFACTORY QUALITY, COURSE OF DEALING, TRADE USAGE OR PRACTICE, MERCHANTABILITY, SUITABILITY, AVAILABILITY, TITLE, NONINFRINGEMENT, OR FITNESS FOR A PARTICULAR USE OR PURPOSE, WITH RESPECT TO THE USE, MISUSE, OR INABILITY TO USE THE PRODUCTS, INCLUDING THE RESULTS, (IN WHOLE OR IN PART) OR ANY OTHER PRODUCTS OR SERVICES PROVIDED TO THE USER BY ECTOSENSE. ECTOSENSE DOES NOT WARRANT THAT (i) ALL ERRORS CAN BE CORRECTED, OR THAT ACCESS TO OR OPERATION OF THE PRODUCTS SHALL BE UNINTERRUPTED, SECURE, OR ERROR-FREE, AND (iii) THE INFORMATION, INCLUDING BUT NOT LIMITED TO THE RESULTS, AVAILABLE ON OR TRANSMITTED BY THE APPLICATION IS TRUE, COMPLETE OR ACCURATE. YOU SPECIFICALLY ACKNOWLEDGE AND AGREE THAT ECTOSENSE CANNOT BE HELD LIABLE FOR ANY HEALTHCARE OR RELATED DECISIONS MADE BY YOU OR YOUR PHYSICIAN BASED UPON THE RESULTS TRANSMITTED OR DISPLAYED BY OR ON THE APPLICATION WHETHER SUCH DATA IS ACCURATE OR INACCURATE. YOU ACKNOWLEDGE AND AGREE THAT YOUR PHYSICIAN, AND NOT ECTOSENSE, IS SOLELY RESPONSIBLE FOR THE INTERPRETATION OF THE RESULTS OR OTHER HEALTHCARE INFORMATION RELATED TO YOU. YOU EXPRESSLY ACKNOWLEDGE AND AGREE THAT YOUR USE OF THE PRODUCTS AND THE RESULTS IS AT YOUR SOLE RISK. YOU ACKNOWLEDGE AND AGREE THAT THERE ARE RISKS INHERENT TO TRANSMITTING INFORMATION OVER AND STORING INFORMATION ON THE INTERNET AND THAT ECTOSENSE IS NOT RESPONSIBLE FOR ANY LOSSES OF YOUR DATA, INCLUDING BUT NOT LIMITED TO THE RESULTS AND ANY USER CONTENT, IN CONNECTION THEREWITH.

13.2 By User. You represent and warrant to Ectosense that (a) you have the authority to enter into this binding agreement personally and (b) that any User Content provided by you for the use of the Application is accurate and truthful and shall not (i) infringe any Intellectual Property Rights of third parties; (ii) misappropriate any trade secret; (iii) be deceptive, defamatory, obscene, pornographic or unlawful; (iv) contain any viruses, worms or other malicious computer programming codes intended to damage Ectosense's system or data; or (v) otherwise violate the rights of a third party.

You agree and acknowledge that Ectosense is not obligated to back up any User Content and/or Results. You agree that any use of the Application or Documentation contrary to or in violation of the representations and warranties of User in this article constitutes unauthorized and improper use of the Application and/or Documentation.

14. Indemnification

14.1 By Ectosense. Ectosense shall defend and indemnify you as specified herein against any founded and well-substantiated claims brought by third parties to the

extent such claim is based on an infringement of the Intellectual Property Rights of such third party by the Application and/or Documentation and excluding any claims resulting from (i) your unauthorized use of the Products, (ii) your or any third party's modification of any of the Products, (iii) your failure to use the most recent version of the Application and/or Documentation made available to you, or your failure to install any corrections or updates to such Application and/or Documentation issued by Ectosense, if Ectosense indicated that such update or correction was required to prevent a potential infringement, or (iv) your use of the Application and/or Documentation in combination with any non-Ectosense products or services.

Such indemnity obligation shall be conditional upon the following: (i) Ectosense is given prompt written notice of any such claim; (ii) Ectosense is granted sole control of the defense and settlement of such a claim; (iii) upon Ectosense's request, the User fully cooperates with Ectosense in the defense and settlement of such a claim, at Ectosense's expense; and (iv) the User makes no admission as to Ectosense's liability in respect of such a claim, nor does the User agree to any settlement in respect of such a claim without Ectosense's prior written consent. Provided these conditions are met, Ectosense shall indemnify the User for all damages and costs incurred by the User as a result of such a claim, as awarded by a competent court of final instance, or as agreed to by Ectosense pursuant to a settlement agreement.

In the event the Application and/or Documentation, in Ectosense's reasonable opinion, are likely to or become the subject of a third-party infringement claim (as per this clause 14.1), Ectosense shall have the right, at its sole option and expense, to: (i) modify the ((allegedly) infringing part of the) Application and/or Documentation so that they become non- infringing while preserving equivalent functionality; (ii) obtain for the User a license to continue using the Application and/or Documentation in accordance with this Agreement; or (iii) terminate the Agreement and pay to the User an amount equal to a pro rata portion of the Fees for that portion of the Application which is the subject of such infringement.

The foregoing states the entire liability and obligation of Ectosense and the sole remedy of the User with respect to any infringement or alleged infringement of any Intellectual Property Rights caused by the Application and/or Documentation or any part thereof.

14.2 By User. You hereby agree to indemnify and hold harmless Ectosense and its current and future affiliates, officers, directors, employees, agents and representatives from each and every demand, claim, loss, liability, or damage of any kind whatsoever, including reasonable attorney's fees, whether in tort or in contract, that it or any of them may incur by reason of, or arising out of, any claim which is made by any third party with respect to (i) any breach or violation by you of any provisions of this Agreement or any other instructions or policies issued by Ectosense; (ii) any User Content violating any Intellectual Property Rights of a third party and (iii) fraud, intentional misconduct, or gross negligence committed by you.

15. Term and termination

15.1 Ectosense shall grant you a license on the Application and/or Documentation during the Term unless the Agreement is terminated in accordance with articles

15.2 or 15.3. During the Term, the User will be eligible to receive all major and minor updates and upgrades for the Application and/or Documentation

For the avoidance of doubt, in the event the User terminates the Agreement by removing the Application from its mobile device before the expiration of the Term, the User is not entitled to a refund of any pre-paid Fees for the remaining period of the Term.

Upon expiration of the Term, any user rights on the Application that were granted to you under this Agreement shall automatically expire and the Results shall no longer be transferred to your Physician through the NightOwl Platform. Please note that you shall not be notified of this automatic expiration.

15.2 Termination for breach. Ectosense may terminate with immediate effect this Agreement and your right to access and use the Application (i) if Ectosense believes or has reasonable grounds to suspect that you are violating this Agreement (including but not limited to any violation of the Intellectual Property Rights of Ectosense) or any other guidelines or policies (including but not limited to the Privacy Policy) issued by Ectosense or (ii) if the User remains suspended for non-payment for more than 60 (sixty) days.

15.3 Effects of termination. Upon the termination of this Agreement for any reason whatsoever in accordance with the provisions of this Agreement, at the moment of effective termination: (i) you will no longer be authorized to access or use the Application or otherwise use any of the features or Results offered by or through the Application; (ii) Ectosense may delete data associated with your account, including but not limited to User content or the Results, on the Application and (iii) all rights and obligations of Ectosense or User under this Agreement shall terminate, except those rights and obligations under those sections specifically designated in article 16.7.

16. Miscellaneous

16.1 Force Majeure. Ectosense shall not be liable for any failure or delay in the performance of its obligations with regard to the Application if such delay or failure is due to causes beyond our control including but not limited to acts of God, war, strikes or labor disputes, embargoes, government orders, telecommunications, network, computer, server or Internet downtime, unauthorized access to Ectosense's information technology systems by third parties or any other cause beyond the reasonable control of Ectosense (the "Force Majeure Event"). We shall notify you of the nature of such Force Majeure Event and the effect on our ability to perform our obligations under this Agreement and how we plan to mitigate the effect of such Force Majeure Event.

16.2 Entire agreement. This Agreement (including the Privacy Policy) constitutes the entire agreement and understanding between you and Ectosense with respect to the subject matter hereof and supersedes all prior oral or written agreements, representations or understandings between the Parties relating to the subject matter hereof. No statement, representation, warranty, covenant or agreement of any kind not expressly set forth in this Agreement shall affect, or be used to interpret, change or restrict, the express terms and provisions of this Agreement.

16.3 Severability. If any provision of this Agreement is, for any reason, held to be invalid or unenforceable, the other provisions of this Agreement will remain

enforceable and the invalid or unenforceable provision will be deemed modified so that it is valid and enforceable to the maximum extent permitted by law.

16.4 Waiver. Any failure to enforce any provision of the Agreement shall not constitute a waiver thereof or of any other provision.

16.5 Assignment. You may not assign or transfer this Agreement or any rights or obligations to any third party. Ectosense shall be free to (i) transfer or assign (part of) its obligations or rights under the Agreement to one of its affiliates and (ii) to subcontract performance or the support of the performance of this Agreement to its affiliates, to individual contractors and to third party service providers without prior notification to the User.

16.6 Notices. All notices from Ectosense intended for receipt by you shall be deemed delivered and effective when sent to the email address provided by you on your account. If you change this email address, you must update your email address on your personal settings page.

16.7 Survival. Articles 7, 12, 13, 15, 16.8 shall survive any termination or expiration of this Agreement.

16.8 Governing law and jurisdiction. Without prejudice to any mandatory legislation, this Agreement shall be exclusively governed by and construed in accordance with the laws of Belgium, without giving effect to any of its conflict of law principles or rules. The courts and tribunals of Leuven shall have sole jurisdiction should any dispute arise relating to this Agreement.